The Court adhered.

Counsel for the Appellant—M'Lennan. Agent—R. Broatch, L.A.

Counsel for the Respondent—Gunn. Agents—Cownie & Galbraith, S.S.C.

Tuesday, February 9.

OUTER HOUSE.

[Lord Kinnear, Ordinary.

BURNETT AND OTHERS *v.* THE BRITISH LINEN COMPANY.

Husband and Wife—Wife's separate Estate—Promissory-Note.

The income of a married woman's separate estate was paid by trustees quarterly into her bank account. She granted a promissory-note to the bank, along with her husband, for an advance made to the latter. The promissory-note was not retired when it fell due, and the bank debited the wife's account with its amount. *Held*, in an application for interdict against the bank, that they were entitled so to debit the wife's account.

George Burnett, advocate, 21 Walker Street, Edinburgh, and Alexander Nicolson, advocate, Greenock, were trustees acting under the marriage settlement of Mr Æneas Ronald Macdonell of Morar, and Mrs Catherine Sidgreaves or Macdonell his wife, dated 12th September 1859, and were also trustees acting under the will of the late Mrs Dorothy Sidgreaves of Preston, dated 8th December 1862.

The funds held by the trustees under the marriage settlement and will were by both these deeds directed to be invested, and the trustees were thereby directed to pay the income thereof to Mrs Macdonell for her life, "for her separate use, without power of anticipation."

Mrs Macdonell had kept a current deposit account for many years with the British Linen Company at their West End branch at Edinburgh, and had been in the habit of regularly drawing cheques upon that account, which were always honoured. Her trustees at her request paid the income of her separate estate into her account in quarterly instalments of about £225 each.

On 9th July 1887 Mr Macdonell presented the following promissory-note, signed by himself and his wife, to the agent of the bank:—"Three months after date we jointly and severally promise to pay to the British Linen Company Bank, or order, at their West End branch here, the sum of one hundred and fifty pounds stg., value received. £150. ÆNEAS R. MACDONELL—CATHERINE MACDONELL,"—and he requested an advance of the amount contained in the promissory-note. The bank's agent made the advance requested.

On 1st October 1887 the trustees paid into Mrs Macdonell's account the sum of £225, and upon 12th October the promissory-note not having been retired, the bank's agent wrote a letter to Mrs Macdonell in the following terms:—"I beg to acquaint you that I have to-day debited your account with £150, being the amount of the joint promissory-note to the bank by Mr Macdonell and yourself due to-day. This leaves a balance of £31 at your credit. Please send me your cheque for £150. On receipt of your cheque I will send you the pro.-note."

Mrs Macdonell declined to give her cheque for £150 in exchange for the promissory-note.

The trustees then presented along with her a note of suspension and interdict against the British Linen Company, praying the Court "to suspend the proceedings complained of, and to interdict, prohibit, and discharge the said respondents from debiting the moneys which at or before 12th October 1887 were paid by the complainers, the said trustees, to the credit of the complainer Mrs Macdonell with the respondents' West End branch bank in Edinburgh, with the amount of a pretended promissory-note, dated on or about 9th July 1887, by which it is alleged that the complainer, three months after date, jointly and severally with her said husband, promised to pay to the British Linen Company Bank, or order, at their said West End branch, the sum of £150, value received; and further, to ordain the respondents, if the moneys shall have been so debited, to restore the said sum for £150 to the credit of the complainer Mrs Macdonell in their books as on the 12th day of October 1887."

The complainers averred that Mrs Macdonell had received no value for the promissory-note which had been discounted with the bank agent by her husband for his own purposes, and that she repudiated it as null and void, and of no force against her or her separate estate.

The respondents in their answers stated that being accustomed to honour Mrs Macdonell's cheques, and relying upon her long course of honourable dealing with them, their agent, on receiving the promissory-note, made the advance requested, upon the faith of her signature to it.

The complainers pleaded—"(1) The said pretended promissory-note being null and incapable of being enforced against the complainer Mrs Macdonell or her separate estate, the complainers are entitled to suspension and interdict as prayed for. (2) The moneys paid to the credit of the complainer Mrs Macdonell with the respondents' said bank by the complainers the said trustees being applicable under the said marriage settlement and will only for her separate use, and without power of anticipation, are not subject to the said pretended promissory-note. (3) The respondents, if the said moneys shall have been so debited, ought and should be ordained to restore the said sum of £150 to the credit of the complainer Mrs Macdonell in their books as on the 12th day of October 1887, in terms of the prayer to that effect."

The respondents pleaded—"(2) The complainers George Burnett and Alexander Nicolson, as trustees foresaid, have no title to sue this suspension and interdict. (4) It being too late to interdict the act complained of, the note ought to be refused. (5) The said promissory-note being valid and obligatory on Mrs Macdonell, and enforceable against her separate estate, this note of suspension and interdict ought to be refused. (6) The said promissory-note being equivalent to a draft by Mrs Macdonell upon her account, the respondents were entitled to place it when due to the debit of he

account. (7) The respondents having advanced money to Mrs Macdonell, are entitled to retain moneys coming into their hands in satisfaction thereof."

On 9th February 1888 the Lord Ordinary (KINNEAR) refused the note, and found the respondents entitled to expenses.

"*Note.*—The complainers Mrs Macdonell's trustees have upon their own statement no title to sue. They hold certain funds under a trust by which they are directed to pay the income to her 'for her separate use without power of anticipation.' They have been in the habit of paying the income at her request to the credit of an account in her name with the British Linen Bank. This is a perfectly proper mode of executing their trust, and when they have paid the income to the credit of her bank account they are exactly in the same position as if they had paid it in cash to herself. In either case they have executed the trust so far as it affected the income so paid, and they have no further right or duty in reference to money which in the due execution of their trust has passed out of their hands. They have no title to interfere with Mrs Macdonell in her disposal of such moneys.

"The only ground upon which the other complainer Mrs Macdonell maintains that her bank account is not to be debited with the amount due under her promissory-note, is that her personal obligations are not binding in law, because she is a married woman. That is a proposition which cannot be maintained since the decision in the case of *Biggart*, in the Liquidation of the City of Glasgow Bank, January 15, 1879, 6 R. 470. It was decided in that case that whatever obligations may be incurred by a married woman 'in the enjoyment and administration of her separate estate are binding upon her just as if she were an unmarried woman.' The respondents are therefore entitled and bound to honour Mrs Macdonell's cheques so long as they have her money in their hands, and if they had allowed her to overdraw her account by honouring her cheques when her funds were for the time exhausted they would be equally entitled to debit her account with the overdrafts, and to apply moneys afterwards paid in to her credit to meet them. I see no principle upon which they can be bound to honour her cheques, and yet not entitled to debit her account with the amount advanced upon her promissory-note in their favour. It would be a different matter if they were seeking to enforce her obligation by attaching the capital in the hands of her trustees; but all they propose to do is, to treat the account which she has opened with them in the ordinary administration and enjoyment of her separate estate in the same manner as they would treat the account of an unmarried woman, or of any other customer. On the authority of the case of *Biggart* I think they are entitled to do so.

"The complainer does not aver that the promissory-note was obtained by undue influence, or that it was presented without her authority. It must therefore be assumed that she signed it, and put it in the hands of her husband for the purpose of obtaining the money which the bank agent was induced to advance upon the faith of her signature. The note was passed in the Bill Chamber, because it was not obvious at that stage that a case might not be made which would necessitate an inquiry as to matters of fact. But a record has now been made up, and it contains no averments which appear to me relevant to be remitted to proof. It is stated that the complainer 'repudiates the promissory-note as null and void,' but there is no averment of fact to justify that repudiation, and it was explained at the bar to mean nothing more than that the complainer's obligations are not binding."

Counsel for the Complainers—Law. Agents—Mitchell & Baxter, W.S.

Counsel for the Respondents—H. Johnston. Agents—Mackenzie & Kermack, W.S.

COURT OF JUSTICIARY.

Wednesday, February 29.

GLASGOW CIRCUIT.

(Before Lord Trayner.)

H. M. ADVOCATE *v.* M'DONALD.

Justiciary Cases—Reset—Relevancy—Want of Specification.

The charge against a prisoner was that "on several occasions between 1st October 1886 and 15th January 1888, at your premises in Saracen Street aforesaid, you did reset 100 tons of pig-iron, the same having been dishonestly appropriated by theft." *Held* that the indictment was irrelevant for want of specification.

Charles M'Donald, broker, Saracen Street, Possilpark, Glasgow, was brought up for trial before the High Court of Justiciary at Glasgow on 29th February 1888. The charge against him was "that between 1st October 1886 and 15th January 1888, at your premises in Saracen Street aforesaid, you did reset 100 tons of pig-iron, the same having been dishonestly appropriated by theft."

The Advocate-Depute was allowed to amend the indictment by inserting the words "on several occasions" between the word "that" and the word "between."

Counsel for the panel objected to the relevancy of the indictment on the grounds specified in the Judge's opinion.

LORD TRAYNER—This indictment as now amended charges the prisoner with having resetted "on several occasions between 1st October 1886 and 15th January 1888" 100 tons of pig-iron; and it is objected that the latitude of time taken is too great, and that there is such a want of specification in the indictment that the prisoner is not bound to go to trial upon it; that without something more precise being stated the prisoner is not in a position to defend himself.

I think the objection so far as regards the latitude of time taken must be repelled. In cases of reset—especially where continuous acts of reset are averred—very considerable latitude is allowed, and for the latitude here taken I think precedent might be found.

The other objection stated I sustain. It is said by the Advocate-Depute that what he